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The types of formality in legal transactions

Elarafi Benelfakih*
Doctor of Law and Political Science, Researcher
Ibn Zohr University
80000, BP 32/S, Agadir, Morocco
https://orcid.org/0000-0002-4328-4141

Abstract
The purpose of this study was to identify and distinguish the types of formality in legal transaction and to determine the legal consequences of each category's absence from such transaction. For this reason, this study relied on both the analytical descriptive technique, which involved reviewing jurisprudence and legal provisions, and the comparative method, which involved conducting horizontal comparisons of legal texts. This study concluded that the sorts of formality were not limited neither by law nor jurisprudence. This fact has led to inconsistent judicial rulings in addition to conflicting legal ramifications. Furthermore, due to the nature of the procedures it represents, the study discovered that a new category of legal formalities is reflected in the electronic format, which is defined by some specific features. It was concluded that a series of legislative acts is moving towards formal transactions for protectionist and financial goals and objectives. Therefore, a clear distinction should be established between the types of formality, their limitation, and the effects of each type, so as to make it easier for the judiciary to set up suitable effects when some legal transactions lack the required formality. Electronic formality should also be considered by legally regulating it due to its features

Keywords:
consent; freedom; conclusion; proof; invalidity; agreement

Introduction

The consent forms the general rule in transactions within modern legal systems, while formality has become the exception. The latter is considered a set of procedures mandated by the legislator to produce the legal effects of the transaction. Overall, formality imposes a limitation on individuals' will, as they are do not at liberty to determine its parameters. The completion of a legal transaction is contingent upon its adherence to the established norms of formality. However, it may happen that individuals agree to express their will in a specific form not imposed by the legislator, but rather dictated by the force of the agreement between the parties.

The general norm guiding transactions in contemporary legal systems is consent. However, some transactions require specific formalities to be followed for the former to be valid. In this respect, formality can be defined as a set of procedures imposed by the legislator to produce its legal effects. Since they restrict people's freedom of choice and prevent legal transactions from being valid, these procedures collectively represent a limitation on people's free will. It is possible for people to agree to express their will in a special form that is not mandated by law but rather by the force of their mutual agreement. This fact causes researchers to disagree on the exact definition of formality, which may be broadly or narrowly defined.

On the other hand, the overwhelming and quickening pace of technological advancement in modern world, particularly in the field of electronic commerce and the resulting electronic contracting, forces to discuss a new kind of formality in legal transactions known as electronic formality. The classification of formality

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*Corresponding author

is consequently of utmost importance considering the differing legal effects of each category, which influence both the misclassification of decision-making and the relevant legal and judicial judgment.

In this context, there is a set of previous studies handling this issue. T. Wilkinson-Ryan (2015) discussed the formalities of written execution in contracts and their effect on the conclusion of the contract or lack thereof. The researcher concluded that contracts are executed in writing either for their conclusion or for proof thereof. M. Al-Ajarmeh & M. Musa (2018) discussed the contractual formality in agreements, where the parties to the legal act agree to make the agreement formal. The researchers concluded that the contractual formality is binding on the parties to the contract after their agreement. R. Mahery (2022) discussed the formality in electronic contracts, where contracts concluded electronically require a special formality called electronic formality. The researcher concluded that electronic formality is a new type added to the other forms of formality in contracts. H. Jacquemin (2022) discussed the types of formality in legal actions and focused on contractual formality and how a contract transforms from a consensual contract to a formal contract. The researcher concluded that formality is not always imposed by law, but it can be imposed by the will of the parties. F. Silvana (2020) discussed the role of formality in protecting the weaker party in legal transactions and concluded that formality in all its types protects the parties involved from exploitation.

The purpose of this study was to define the types of formalities in legal transactions, clearly distinguishing between them, and determining the position of the judiciary on formalities in transactions.

Materials and Methods

The methodological framework was based on a double definition of the concept under study. The term "formality" in transactions is considered a manifestation of legal obligation that focuses on restricting the will in the creation or proof of certain actions. This obligation is the strongest manifestation of legal obligation, the formality in transactions is characterised by its specificity, which manifests in its focus on restricting will in legal transactions. It refers to a set of procedures imposed by the legislator to limit the expression of will in the creation or proof of transactions. These procedures can also be imposed by the parties themselves through mutual agreement. Notably, the term "formality" in this context can refer to the restriction of will when creating or proving transactions, which is called substantive formality, or to a set of restrictions concerning form and external appearance, such as the formal aspects in litigation procedures and others, which is called procedural formality. This study focused more on the substantive formality related to legal transactions, which is a restriction on the expression of will when creating or proving a legal transaction. To identify the different types of formality and distinguish them in terms of the legal effects of their absence, research on the topic of formality in legal transactions necessitates keeping track of the key legal texts, statements, and rulings on the topic, which is why this study employed several significant approaches.

The comparative method was applied to compare legal texts[1,2], jurisprudential and judicial opinions[3,4,5], which offered a better understanding of the points of agreement and disagreement between jurisprudential and legal approaches. One of the crucial advantages of the comparative method is that it contributed to providing a comprehensive picture of the study subject in all its aspects: jurisprudential, theoretical, and practical. It helped to reveal various trends and positions, and ultimately enables balancing them in a way that allows finding the best solution to the issue. For this reason, the study examined the legislative acts of Morocco and France. At each stage of the study, legal opinions, legal texts, and court decisions were reviewed and described, and then rigorously analysed to identify their strengths and weaknesses. The descriptive-analytical method was employed not to merely present what exists, but to first examine each detail of the study in a descriptive manner, and then analyse, discuss, and synthesise it from a scientific standpoint.

Results and Discussion

Formality items in terms of source. There are two categories of formality in legal transaction: legal formality and agreement formality. Due to the significance of particular legal acts, the protection of people's property, and the protection of their rights, the legislature has made it obligatory to declare the will in a manner

[1] Civil Code of France. (2004, February). Retrieved from https://www.fd.ulisboa.pt/wp-content/uploads/2014/12/ Codigo-Civil-Frances-French-Civil-Code-english-version.pdf.
[2] Law of the Kingdom of Morocco No. 53.05. (2007, November). Retrieved from https://justice.gov.ma/wp-content/uploads/2022/05/legislation-6294abb144092.pdf.
[3] Decision of the Cassation Court of France No. 04-13.925. (2007, March). Retrieved from https://www.legifrance.gouv.fr/search/all?tab_selection=all&searchField=ALL&query=04-13.+925.+&page=1&init=true.
[4] Decision of the Cassation Court of Morocco in Commercial Case No. 1921. (2005, January) Retrieved from https://www.cspj.ma/uploads/files/jurisprudence/%D9%85%D8%AC%D9%84%D8%A9%20%D9%85%D9%84%D9%81%D8%A7%D8%AA%20%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9/%D9%85%D8%AC%D9%84%D8%A9%20%D9%85%D9%84%D9%81%D8%A7%D8%AA%20%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9%20%D8%B9%D8%AF%D8%AF%205.pdf.
[5] Decision of the Cassation Court of France No. 22-16.115. (2024, January). Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000049053079? init=true&page=1&query=FORMALISME&searchField=ALL&tab_selection=all.

specified by law in legal formality transactions. These transactions lose their meaning if they are executed improperly. A legal formality is thus defined as a legal obligation set forth in a legislative statute, whereby the legal text simultaneously serves as the source of formality and the obligation itself.

Legal formality refers to the requirements, processes, and documents set forth by the law for correct legal transactions (Rabiah, 2024). This formality is an exception to the rule of consent, which underlies the commission of acts. In legal formality, consent is not only required, but it also must follow a certain form that was specified by law since a transaction can only be considered valid if it follows that form. Based the above, the legal formality arguably limits the freedom of the parties to select the method that is most suitable for them to reflect their actions. It establishes a form that must be adhered to for the transaction to have legal effects. Overall, the meaning of legal formality can be summarised as a legally binding text that serves as the basis of the law. In this context, the French Court of Cassation upheld the decision of the Court of Appeal[1], which ruled that the adoption contract, which lacked the formality of its written execution, was invalid according to Article 348-3 of the French Civil Code[2].

In this respect, the legislator frequently imposes legal formality by demanding a written execution, whether formal or customary, and sometimes by requiring registration or extradition. The parties may indicate their intention to enter into a legally binding contract through any form of expression, provided that the principle of consent is observed. As a result, they can express their will to establish legal acts by agreeing on a certain form that is not imposed by the legal text; this procedure is known as a contractual formality.

According to the principle that agreements must be honoured and the authority of will principle, the parties to a legal disposition are obliged to adhere to the form that they have mutually agreed upon as soon as both parties accept it. Consequently, the parties are bound by the agreed format once it is accepted by all parties, in a manner analogous to that of a legal mandate. Although the parties may subsequently agree to reverse or change this agreement, doing so unilaterally will have consequences that are similar to those of a lack of legal form. Unilateral reversal will not create new legal obligations.

Nevertheless, this formality may present certain challenges, particularly when the parties formalise their initial satisfactory legal transactions, thereby rendering formality obligatory and imposed. Two principal perspectives emerged among the researchers regarding this matter. The first opinion posits that the format of an agreement is regarded as self-contained and possesses the same legal weight as the prescribed format when it is stipulated as a prerequisite for a transaction. This opinion also asserts that an agreement on a specific format for a legal act effectively transforms the transaction from one of consent to one of formality (Hilani, 2020). The second opinion posits that the agreement form differs from the legal form and is therefore unable to convert a legal transaction into a formal one. It also states that the nature of the obligation is not fulfilled in the agreement form and that the parties may expressly reverse it through a subsequent agreement or even implicitly after the transaction was carried out without taking the agreed form into consideration (Al-Sanhuri, 2022).

The consensual appearance of agreement can transform a transaction from one of consent to one of formality. It is regarded as a distinct form in legal dispositions because the parties' intention to impose it gives rise to their authority to establish an obligation according to the *pacta sunt servanda* rule and the principle of the authority of will. The following distinctions between agreement formality and legal formality in legal transaction can be deduced: (1) legal formality is derived from the legal text, but the agreement formality is generated from the agreement and the parties' will; (2) legal formality is still stronger than the agreement formality, despite the latter's reputation as having its own strength in legal binding; (3) the parties may agree to terminate the agreement formality at a later date, but they may not terminate the legal formality because it is regarded as a public order.

Types of formality as required for conclusion or proof. Every method or requirement imposed on the parties' legal disposition while expressing their desire is referred to as formality in its broadest sense. But since this limitation is either enforced by demanding or demonstrating a particular type of legal action, formality can be categorised solely in terms of its obligation to conclude the agreement and provide proof, or it can also be classified in terms of its obligation to require or prove other formalities (Mahery, 2022).

In certain legal acts, the legislator does not merely require consent for the establishment of a transaction; rather, they mandate that the parties adhere to a specific form. Should they fail to do so, the transaction is rendered null and void. This is referred to as a form of conclusion. The formality of the conclusion is considered as the pivotal factor in the validity of legal acts, which are deemed invalid by the law unless the requisite form is observed. As a foundational element for formal legal transactions, formality must be added in addition to eligibility, consent, convenience, and justification. The formality of conclusion places restrictions on the

[1] Decision of the Cassation Court of France No. 04-13.925. (2007, March). Retrieved from https://www.legifrance.gouv.fr/search/all?tab_selection=all&searchField=ALL&query=04-13.+925.+&page=1&init=true.
[2] Civil Code of France. (2004, February). Retrieved from https://www.fd.ulisboa.pt/wp-content/uploads/2014/12/ Codigo-Civil-Frances-French-Civil-Code-english-version.pdf.

parties' ability to express their will freely and establish legal action because failing to follow the required formalities renders the transaction invalid. According to N. Andrews (2021), this form, which is essential for establishing legal acts, is frequently written. Similarly, the Court of Morocco Cassation Court ruled that the sale of real estate is not considered complete unless it is conducted in writing[1].

The formality of conclusion is a fundamental aspect of the legal disposition of its conclusion and establishment. It is regarded as a cornerstone of the process and is contingent upon accessibility. In the absence of formality, the transaction is considered invalid, and the process is deemed to have ceased (Mohale, 2022). The judgement of the Marrakesh City Court of First Instance in Morocco indicates that the contract is void and without legal effect due to the absence of any reference to the delivery in the donation contract[2]. Notably, the format of convening may be mandated by a legislator's statutory provision or by agreement of the parties to the legal disposition, where the parties may agree that their transaction is valid only by adhering to a particular form, and the act between the parties is authorised formally, even if it was initially satisfactory.

In certain instances, a single form of evidence may be sufficient for the legislator to establish the owner's rights in specific legal acts. The lack of evidence pertaining to the aforementioned stipulations renders the asserted rights inconclusive in a legal context. Consequently, the absence of the documentation mandated by legislation or mutually agreed upon by the parties to substantiate their claims renders the action unsubstantiated from the perspective of the owner. This restriction of proof according to the means prescribed by law or agreement is the so-called form of proof. The French Court of Cassation confirmed that the formality of the signature is a formality of proof and not a formality of conclusion[3].

The procedures that restrict the parties' capacity to engage in legal action to select a means of proof are referred to as the form of proof. This implies that the parties must rely on the legally specified or agreed-upon means or measures before the establishment of the transaction.

Legal transactions that need a specific form of proof are still lawful even if they are not completed in that manner; however, according to H. Jacquemin (2022), in case of a disagreement, they must be proven through legally prescribed means or agreement. The absence of this formality renders it more challenging for the parties to ascertain the existence of the legal transaction and their entitlement to assert its consequences. However, this has no direct bearing on the manner in which the law is administered. The question thus arises as to whether the absence of a legally defined means or agreement to demonstrate legal conduct provides the basis for relying on an alternative method.

In this context, A. Görmez & S.G. Beyoğlu (2022) believe that the lack of legally defined means of proof or agreement makes the evidentiary process challenging but possible since evidence or an oath may be relied upon in addition to confirmation. Furthermore, the non-contractors may prove the contract by all available means of proof. Another trend indicates that there is no possibility of deviating from the measures that are required to prove the act. A debtor could only exercise a legal right if it could demonstrate it through certain methods; otherwise, it had no such legal right. In the absence of evidence, no legal activity could be considered valid according to the prevailing legal framework. (Demoulinet & Montero, 2002).

T. Wilkinson-Ryan (2015) posits a compelling argument regarding the implications of evidentiary standards and procedural methods employed by legislators and the parties involved in transactions. Wilkinson-Ryan asserts that when evidentiary requirements are imposed by the legislature or mutually agreed upon, and if one party fails to prove their right according to the stipulated methods, it renders the transaction legally non-existent. This is because it opens a broad scope for the introduction of evidence that could potentially alter the legal standing of the transaction. In instances where legislation mandates a specific method but does not prohibit another, adherence to the former would contravene the rule of law. This principle extends to agreements between the parties involved. Pursuing the aforementioned approach would restrict the parties' capacity to act by focusing on a singular method of determining their transaction. Consequently, the formality of proof acquires the authority to compel, as without it, the transaction cannot be substantiated in accordance with legal or contractual requirements, thereby rendering it unenforceable.

The distinction between the forms of proof and conclusion refers to how each differs from the other. Formality of conclusion is a declaration of intent, whereas formality of proof is evidence that the rights were established for their owners and that the transaction actually took place. In contrast to the form of conclusion,

[1] Decision of the Cassation Court of Morocco in Commercial Case No. 1921. (2005, January) Retrieved from https://www.cspj.ma/uploads/files/jurisprudence/%D9%85%D8%AC%D9%84%D8%A9%20%D9%85%D9%84%D9%81%D8%A7%D8%AA%20%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9/%D9%85%D8%AC%D9%84%D8%A9%20%D9%85%D9%84%D9%81%D8%A7%D8%AA%20%D8%B9%D9%82%D8%A7%D8%B1%D9%8A%D8%A9%20%D8%B9%D8%AF%D8%AF%205.pdf.

[2] Decision of the Cassation Court of Morocco in Civil Case No. 4831. (1999, June). Retrieved from https://mahkamaty.com/blog/2014/06/04/%d8%a7%d9%84%d9%87%d8%a8%d8%a9-%d8%b4%d8%b1%d8%b7-%d8%a7%d9%84%d8%ad%d9%8a%d8%a7%d8%b2%d8%a9-.

[3] Decision of the Cassation Court of France in Case No. 09-41.634. (2011, November). Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000024920390.

which is viewed by the law as the foundation of the act and is unenforceable without it, the second category therefore has nothing to do with the construction of a legal transaction but rather with the establishment of its existence. The lack of formality in a legal transaction consequently does not automatically render the act invalid since its absence does not imply the absence of other elements of the transaction, which means that it is still valid and present but requires proof (Demouline & Montero, 2002).

To establish the legal validity of a document, it may be necessary to include a written form as a primary source of evidence. This process, however, is not without the formalities of its own. To establish a transaction in the context of a dispute, it is possible to employ the same methods. However, to substantiate the transaction, it is essential to have the form of proof, rather than merely a conclusion. Consequently, in the second case, the absence of a written execution does not invalidate the transaction; nevertheless, this transaction must be substantiated according to the legal framework, as the legislator will only accept written evidence or stronger forms of proof. As a consequence, according to I. Hilani (2020), it is necessary to distinguish between the existence of the transaction itself and the means of proof in a dispute, so long as such transaction is sufficient to demonstrate the contractors' permission and the written form is needed merely to support that claim. In this regard, the French Court of Cassation, in one of its decisions, upheld the decision of the Court of Appeal that invalidated the sponsorship contract because it did not include mandatory data[1].

In conclusion, the aforementioned formalities allow for a clear distinction to be made between the existence of legal conduct and its very existence, as well as the necessity for evidence in this regard. The absence of formality results in the absence of conduct. The lack of form of proof is unrelated to the existence and conduct of legal activity. However, it does lead to the absence of evidence to prove. There is a clear distinction between a legal action, its actual existence, and the need to prove it. This distinction is based on the formalities mentioned above. The lack of formality results in the lack of an action altogether. The absence of evidence to substantiate it is irrelevant in terms of the question of whether a legal activity exists or is being carried out.

Types of formality in terms of the nature of the transaction. Considering the diminished input required for electronic commerce in comparison to conventional commerce, the outcomes of e-commerce have become comparable to, and on occasion superior to, those of conventional trade since its inception. The development of electronic legal transactions was contingent upon the advent of electronic commerce, considering the pivotal role that legal acts play in commercial transactions (Ichim, 2022). This is also the case regarding the electronic legal transactions based on a purely technical and electronic foundation, as opposed to conventional acts. Considering the fundamental tenets upon which they are based, the formalities associated with legal activities may be classified into two principal categories: conventional and electronic. This enables an examination of the conventional formality of legal transactions, and whether it is a fundamental tenet of such proceedings. This type of act is founded upon written documentation and is designated as a conventional formality when a legislative body mandates a specific formality or proof. It is often the case that conventional formality is confined to a written format. Furthermore, some of the conventional procedures that are required by the legislator to act have been established by the legislator's issuers and are subject to conditions that are only valid for the legislator (Mthembu, 2005).

According to C. Singh (2024), the practice of requiring handwritten signatures on legal documents is sometimes employed as a means of maintaining traditional forms of formalisation. Other examples include following certain procedures mandated by the legislator, appearing before specific actors, and signing paper-based transactions. All the actions mentioned above are characteristics of conventional formal transactions, which frequently relies on the physical presence of the parties and the paper-based element at the same time and place as electronic legal acts.

Electronic contracts are agreements created using a variety of recent technology, the most significant of which is the computer. It can be argued that such contracts are agreements created using these methods and some of the pillars that utilise modern technology. However, the term is now specifically used to refer to contracts made through the Internet as a result of the invention of the computer and the proliferation of messaging and contracting over it. This category no longer includes contracts made via the radio, phone, or any other form of communication. Electronic contracts, as defined by S. Berkchi (2021), are also known as online contracts. Electronic commerce, in turn, is the collective term used to describe all e-transactions, particularly those conducted via the internet, email, and other electronic channels.

In the context of online contracts, the temporal and spatial parameters of the contract are of particular importance. In the absence of a lengthy interval, the contract is essentially between time and place, and is made between parties who are present in time but absent in space. The precise definition of this contract can be found in the relevant legislation pertaining to contracts and electronic transactions. The Law of Jordan No. 15

[1] Decision of the Cassation Court of France in Case No. 14-24.287. (2015, July). Retrieved from https://www.legifrance.gouv.fr/juri/id/JURITEXT000030871577?init=true&page=1&query=14-24.+287&searchField=ALL&tab_selection=all.

"On Electronic Transactions"[1] defined it as an agreement concluded entirely or in part using electronic means. According to G. Klass (2024), the general definition of an electronic contract is an agreement where affirmative action meets acceptance on a global network that ensures distant communication via audio-visual means as a result of a beneficial and workable interaction.

Although the Moroccan legislation did not provide a clear definition of electronic contracting, the Act No. 53.05[2] did use the term "Legal data" in the context of discussing electronic data exchange, and is understood to refer to all editions that can have legal consequences of a civil, commercial, or administrative nature. Therefore, it is correct to argue that the scope of application of this law is rather broad. Although the legislation has expressly excluded from the field of application all documents relating to the Family Code[3] and documents relating to personal, civil, or commercial guarantees, except for those made by a person for their professional purposes, this clause applies to all legal and administrative decisions reached between private individuals, contractors, and departments (Younsi, 2020).

Although the Moroccan legislation also underlined the similarity between conventional and electronic editions, it only specified the requirements for issuing them and their formal procedures rather than defining them or outlining their concepts. However, written form was a requirement for the security of electronic transactions, a strategy that Moroccan legislator had adopted through Law 53.05[4], unifying the requirements for physical and electronic transactions. All legislation establishing a law governing electronic transactions was passed unanimously. The Egyptian legislator's approach differs from that of the Moroccan legislator in terms of comparative laws regarding the legality of an electronic signature. The Egyptian legislator[5] certifies that an electronic signature has the sole power to prove, in connection with only business, legal, and administrative transactions. In other words, the reach of this signature is restricted to prevent any jurisprudence from emerging (Crfpa, 2020).

Based on the above, electronic formality is a set of conditions and procedures necessary for legal act that is concluded in an electronic form. Legal transaction may occasionally be rendered invalid if it does not adhere to these conditions and procedures, or it may fail to be established due to the absence of legal requirements specified in the electronic document. It is commonly assumed that conventional formality is a fundamental aspect of a contract, serving to substantiate its existence. However, it is often observed that such formality is, in fact, a standard practice among contractors, with the resulting documentation being submitted to an official chamber for recordation. After a set of laws have acknowledged that an electronic signature is the most important requirement of writing due to its trustworthiness and validity to use against those who deny it, and after a set of laws have equated the authenticity of traditional and electronic editions, electronic formality can replace conventional formality in legal conduct. According to C. Visser *et al*. (2004), this can happen before an official record or before a competent official.

As previously stated, electronic commerce has reached a point of development whereby it now can compete with conventional commerce in all areas, thus enabling a variety of legal transactions to be concluded digitally. In certain of them, the law may call for an electronic version of formality that differs from conventional formality in several ways, including the following:

- conventional formality is often executed in writing and is paper-based in conventional transactions, whereas electronic acts are executed digitally (Silvana, 2020);
- ented by technical and technological constraints like an electronic signature, conventional formality is frequently executed in writing or some other conventional technique (Cherkaoui, 2022);
- in the case of electronic formality, the legislator imposes a set of requirements that are absent from the conventional formality.

These are the key distinctions between the conventional formality and electronic formality, a more modern type of formality that has developed alongside the electronic commerce and the legal transaction that occurs when conducting electronic acts. The primary distinction between the two types continues to be the nature of the foundation upon which both conventional and electronic formalities are carried out.

Based on the findings of this study, the following recommendations are proposed. It is imperative to define the precise legal and jurisprudence concept of formality, particularly considering the growing trend towards formal conduct for protective and financial purposes and objectives, as evidenced by an evolving body of legislation. To facilitate the process of establishing appropriate consequences when formalities fall

[1] Law of Jordan No. 15 "On Electronic Transactions". (2015, April). Retrieved from https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=103025&cs=1bObGo7hxZUNZMYKUwXsqGwEIMovjwQx3WAcNLci0lLEsC0oTDQRGyFHEJY9HENDQ1zUC0kcfdFJ4xt2Ti7RiCw.
[2] Law of the Kingdom of Morocco No. 53.05. (2007, November). Retrieved from https://justice.gov.ma/wp-content/uploads/2022/05/legislation-6294abb144092.pdf.
[3] Family Code of Kingdom of Morocco. (2004, February). Retrieved from https://justice.gov.ma/wp-content/uploads/2022/05/legislation-6294abb2180e1.pdf.
[4] Law of the Kingdom of Morocco No. 53.05. (2007, November). Retrieved from https://justice.gov.ma/wp-content/uploads/2022/05/legislation-6294abb144092.pdf.
[5] Civile Code of Arabian Republic Egypt. (1948, July), Retrieved from https://faolex.fao.org/docs/pdf/egy212999.pdf.

behind the pace of legal proceedings, it is essential to implement a clear differentiation between the various types of formalities. This should be accompanied by a comprehensive inventory of each type, delineating its specific effects. Due to the special nature of electronic formality, it must be considered and governed by law. It is proposed to amend the provisions of Article 443 of the Moroccan Civil Code[1], which stipulates the necessity of proving a transaction exceeding 10,000 dirhams in writing. This article requires a formality of proof rather than a formality of conclusion of contract, which raises a significant issue in the case of an unwritten dispute. It would be prudent for the legislator to stipulate this condition at the conclusion of the contract, rather than merely after the dispute has arisen. The provisions of Article 273 of the Real Rights Code[2], which require a gift contract to be written in an official document under penalty of invalidation, should be amended. In practice, the contract may be drafted informally in certain instances where official documentation is not accessible to the relevant authorities. With regard to this matter, the Court of Cassation[3] ruled that the mortgage contract must include the formalities set forth in Article 4 of the Moroccan Rights Code[4].

Conclusions

The purpose of this study was to identify the types of formalities in legal transactions, clearly distinguish between these types, and determine the judiciary's stance on formalities in transactions. The formality has been divided into several categories due to the doctrinal differences regarding its legal concept and its relationship with the historical development. Some types impose a restriction on the freedom of will expression during contracting and are called the formalities of conclusion, while others relate to limiting the parties freedom in choosing means of proof and are called the formalities of proof. Additionally, there is another division based on the source of formality: if imposed by law, it is called legal formality, and if imposed by the parties' agreement, it is called contractual formality. The rapid and significant technological advancement in the realm of modern technology, especially in the field of e-commerce and the electronic contracts resulting from it, has necessitated the discussion of a new category of formality in legal transactions, namely the electronic formality. Notably, the diversity of formalities required for each legal transactions aims to achieve a set of objectives. In ancient legislation, the purposes of formality were ends in themselves, serving purely psychological and religious rituals. However, in Islamic jurisprudence and contemporary laws, the purposes of formality are protective. This is evident in the protection of the weaker party in reciprocal transactions and in gratuitous contracts, where the donor is informed through the competent documentation or registration authorities that they will give the financial values without compensation.

Having conducted extensive research on the concept of formality and its various categories in the context of legal transactions, as well as examining a range of legal precedents and texts, the study reached the following fundamental conclusions and recommendations. There is no comprehensive intellectual or legal inventory that can be considered entirely uniform. The discrepancy in legal implications and the dependency on judicial determinations stem from the distinction and lack of constraints on the types of formation. Furthermore, due to the nature of the processes they represent, electronic formality represents a new category of legal formalities and has distinct advantages.

Considering the rapid development of e-commerce and the emergence of electronic contracts, it is advisable to investigate the specific features and legal implications of electronic formalities. Particular attention should be paid to ensuring the protection of the parties to electronic contracts, as well as to identifying legal instruments that promote the security and legitimacy of such transactions.

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None.

Conflict of Interest

The author of this study declares no conflict of interest.

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Види формальностей в юридичних угодах

Еларафі Бенельфакіх
Доктор права та політичних наук, дослідник
Університет Ібн Зор
80000, BP 32/S, м. Агадір, Марокко
https://orcid.org/0000-0002-4328-4141

Анотація
Метою дослідження було виявлення та розмежування видів формальностей у юридичному правочині, визначення правових наслідків відсутності кожної з них у такому правочині. Саме тому дослідження ґрунтувалося як на аналітично-описовому методі, що передбачав аналіз судової практики та законодавчих положень, так і на порівняльному методі, за допомогою якого було проведено горизонтальні порівняння правових текстів. Дослідження засвідчило, що види формальностей не обмежуються ні законодавством, ні судовою практикою. Цей факт, крім суперечливих правових наслідків, призводить ще й до непослідовних судових рішень. З'ясовано, що, з огляду на характер процедур, які він представляє, в електронному форматі відображається нова категорія юридичних формальностей, що вирізняється певними специфічними особливостями. Було сформульовано висновок, що низка законодавчих актів характеризується тенденцією до формальних транзакцій з протекціоністськими та фінансовими завданнями. Тому слід чітко розмежувати види формальностей, їх обмеження та наслідки кожного виду, щоб полегшити судовій владі встановлення відповідних наслідків у випадках, коли деякі юридичні транзакції не мають необхідної формальності. Електронну формальність також слід ураховувати під час правового регулювання, з огляду на її особливості

Ключові слова:
згода; свобода; укладення; доказ; недійсність; договір